IOI Pelita Plantation Sdn Bhd v Lah Anyie Ngau & Ors

HIGH COURT (MIRI) — SUIT NO MR-22–9 OF 2011
STEPHEN CHUNG J
24 JANUARY 2014

Civil Procedure — Committal proceedings — Application for — Interlocutory injunction granted to restrain defendant from entering, occupying or trespassing land — Allegation that defendant had disobeyed and in breach of injunction order — Affidavit verifying facts did refer to numerous police reports lodged against various persons — Dates, times, places and or incidents of numerous trespasses not pleaded

The first defendant was the registered owner of a parcel of land ('Lot 3') which was transferred to Rinwood Pelita Plantation Sdn Bhd which subsequently changed its name to IOI Pelita Plantation Sdn Bhd. Lot 3 was amalgamated with another parcel of land known as Lot 8 which were subdivided into four parcels of land. IOI Pelita had developed an oil palm plantation known as Ladang Tegai on the land. In another High Court proceedings, the plaintiffs had sued the defendants, inter alia, for trespass and for impairing their native customary rights ('NCR') over the above described parcels of land. The presiding High Court judge ruled that the plaintiffs had NCR over the land; that the defendants had impaired the NCR of the plaintiffs over their land; that the defendants were required to pay damages to the plaintiffs to be assessed; and that notwithstanding their NCR over the land that the first defendant, shall remain the registered owner of and shall have possession of the land. On appeal, the Court of Appeal set aside the decision of the High Court that the plaintiffs did not have any NCR over the land which was owned by IOI Pelita. In this present suit, the plaintiff sued the seven defendants, including three of the previous plaintiffs, for trespass and unlawful harvesting of fresh fruit bunches ('FFB') of oil palm fruits from the plantation of the plaintiff, for injunctions and damages against the defendants. On an application by the plaintiff against the seven defendants, after reading the affidavits filed and hearing counsels for the parties, the court allowed the interlocutory injunctions against the defendants. In view of the above decision of the Court of Appeal, the parties attempted mediation and negotiations to settle their disputes but failed to do so. The plaintiff filed an application, upon leave having been obtained on 20 February 2013 from the court, for an order of committal against the first to sixth defendants together with seven others for failure to comply with or for committing a breach or breaches of the terms of the court order.

Held, dismissing the application:

(1) Although the plaintiff had filed an affidavit verifying the facts referring to numerous police reports lodged against various persons, the plaintiff did not plead or set out the dates, times, places and or the incidents in respect of the numerous trespasses, harvestings, blockings, taking control, assuming control, seizures, threats to seize or interferences with the plaintiff's occupation and possession of the land allegedly committed by the six defendants and the seven persons in breach of the court orders. These specific charges must be set out in the statement otherwise the alleged contemnors would not be in a position to answer those charges made against them (see para 29).

(2) The affidavit verifying the facts also did not set out any particulars as to the dates, times, places and or the incidents in respect of the alleged breaches of the court order committed by the alleged contemnors notwithstanding that he had referred to those police reports. The accompanying affidavit was only to verify the facts relied in that statement. It could not add facts to it. Any deficiency in the statement could not be supplemented or cured by any further affidavit at a later time. The alleged contemnor must at once be given full knowledge of what charge he is facing so as to enable him to meet the charge (see para 30).

(3) Based on the evidence adduced by the plaintiff at the committal proceedings, the plaintiff had failed to prove its case against any of the alleged 13 contemnors beyond any reasonable doubt. Further, the six defendants and the seven persons named as the alleged contemnors have raised some doubts that they were the persons who had committed the alleged breaches complained of (see para 35).

[Bahasa Malaysia summary

Defendan pertama adalah pemilik berdaftar sebidang tanah ('Lot 3') yang mana dipindahkan kepada Rinwood Pelita Plantation Sdn Bhd yang kemudiannya menukar namanya kepada IOI Pelita Plantation Sdn Bhd. Lot 3 digabungkan dengan sebidang tanah yang lain yang dikenali sebagai Lot 8 yang dibahagikan kepada empat bidang tanah. IOI Pelita telah membangunkan ladang kelapa sawit dikenali sebagai Ladang Tegai atas tanah tersebut. Di dalam prosiding Mahkamah Tinggi lain, plaintif-plaintif telah menyaman defendan-defendan, antara lain, untuk pencerobohan dan pengurangan hak adat nak negeri mereka ('NCR') ke atas bidang tanah yang dinyatakan di atas. Hakim Mahkamah Tinggi yang mendengar memerintahkan bahawa plaintif-plaintif mempunyai NCR ke atas tanah tersebut; bahawa defendan-defendan telah mengurangkan NCR plaintif-plaintif ke atas tanah mereka; bahawa defendan-defendan dikehendaki untuk membayar ganti rugi kepada plaintif-plaintif untuk ditaksirkan; dan bahawa meskipun NCR mereka ke atas tanah tersebut bahawa defendan pertama, akan kekal sebagai pemilik pendaftar dan akan mempunyai milikan tanah tersebut. Atas rayuan,

Mahkamah Rayuan mengetepikan keputusan Mahkamah Tinggi bahawa plaintif-plaintif tidak mempunyai apa-apa NCR ke atas tanah yang dimiliki oleh IOI Pelita. Dalam tindakan ini, plaintif menyaman ketujuh-tujuh defendan, termasuk tiga daripada plaintif-plaintif terdahulu, untuk pencerobohan dan secara salah memetik buah baru buah minyak kelapa sawit daripada ladang plaintif, untuk injunksi dan ganti rugi terhadap defendan-defendan. Atas permohonan oleh plaintif terhadap ketujuh-tujuh defendan, selepas membaca afidavit yang difailkan dan mendengar peguam-peguam untuk pihak-pihak, mahkamah membenarkan injunksi interlokutori terhadap defendan-defendan. Mengambil kira keputusan Mahkamah Rayuan di atas, pihak-pihak mencuba mediasi dan rundingan untuk menyelesaikan pertikaian mereka tetapi gagal berbuat sedemikian. Plaintif memfailkan permohonan, selepas izin diperolehi pada 20 Februari 2013 daripada mahkamah, untuk perintah komital terhadap defendan-defendan pertama hingga ketujuh bersama dengan tujuh yang lain untuk mematuhi atau melakukan kemungkiran terma-terma perintah mahkamah.

Diputuskan, menolak permohonan:

(1) Walaupun plaintif telah memfailkan afidavit mengesahkan fakta dengan merujuk kepada beberapa laporan polis yang dikemukakan terhadap pelbagai orang, plaintif tidak memplid atau menetapkan tarikh, masa, tempat dan atau kejadian berkaitan beberapa pencerobohan, pemetikan, halangan, mengambil jagaan, anggapan jagaan, perampasan, ugutan untuk merampas atau campur tangan dengan penghunian dan milikan plaintif terhadap tanah tersebut yang didakwa dilakukan oleh keenam-enam defendan dan ketujuh-tujuh orang dalam kemungkiran perintah-perintah mahkamah. Tuduhan-tuduhan spesifik ini mesti ditetapkan di dalam pernyataan jika tidak penghina-penghina yang didakwa tidak akan berada dalam kedudukan untuk menjawab tuduhan-tuduhan yang dibuat terhadap mereka (lihat perenggan 29).

(2) Afidavit yang mengesahkan fakta juga tidak menetapkan apa-apa butir terhadap tarikh, masa, tempat dan atau kejadian-kejadian berkaitan kemungkiran perintah mahkamah dilakukan oleh penghina-penghina yang didakwa meskipun dua dirujukkan kepada laporan-laporan polis tersebut. Afidavit yang mengiring hanya untuk mengesahkan fakta yang digunakan dalam pernyataan. Ia tidak dapat menambahkan fakta kepadanya. Apa-apa kekurangan dalam pernyataan tidak dapat ditambah atau diselamatkan oleh apa-apa afidavit selanjutnya pada masa kemudiannya. Penghina yang didakwa mesti serta merta diberikan pengetahuan penuh mengenai tuduhan apa yang dihadapinya untuk membolehkannya menghadapi tuduhan (lihat perenggan 30).

(3) Berdasarkan keterangan yang dikemukakan oleh plaintif di prosiding

komital, plaintif telah gagal untuk membuktikan kesnya terhadap mana-mana 13 penghina-penghina yang didakwa melampaui keraguan munasabah. Selanjutnya, keenam-enam defendan dan orang yang ketujuh yang dinamakan penghina-penghina telah membangkitkan keraguan bahawa mereka adalah orang-orang yang melakukan kemungkiran yang diadukan (lihat perenggan 35).]

Cases referred to

Attorney General v Newspaper Publishing plc and others [1987] 3 All ER 276, Ch D (refd)
Attorney General v Times Newspaper Ltd [1973] 3 All ER 54, HL (refd)
Metro Giant Group Sdn Bhd v Gala Sari Resources Sdn Bhd & Ors [2007] 7 MLJ 52; [2008] 7 CLJ 579, HC (refd)
Syarikat M Mohamed v Hahindapal Singh & Ors [1991] 2 MLJ 112, HC (refd)
Tan Sri Dato' (Dr) Rozali Ismail & Ors v Lim Pang Cheong @ George Lim & Ors [2012] 3 MLJ 458, FC (refd)
Tan Sri G Darshan Singh v Tetuan Azam Lim & Pang [2013] 5 MLJ 541, CA (refd)
Wee Choo Keong v MBf Holdings Bhd & Anor and Another Appeal [1995] 3 MLJ 549, SC (refd)

Legislation referred to

Rules of Court 2012 O52 rr 2B, 3(1), 3(2)

Sim Hui Chuan (Lim Lip Sze and KY Lin with him) (Kadir Wong Lin & Co) for the plaintiff.
Sam Laya (Sam Laya & Co) for the six defendants and seven others.

Stephen Chung J:

[1] In Suit No 22–59 of 1997 (MR), the first defendant in that suit was the registered owner of a parcel of land described as Lot 3 Dulit Land District which was transferred to Rinwood Pelita Plantation Sdn Bhd which subsequently changed its name to IOI Pelita Plantation Sdn Bhd, the plaintiff in this suit being Suit No MR-22–9 of 2011 ('referred to as IOI Pelita').

[2] Lot 3 was amalgamated with another parcel of land described as Lot 8 Dulit Land District which were subdivided into four parcels of land described as Lot 5, Lot 6, Lot 10 and Lot 12 all of Block 5 of Dulit Land District ('the land'). IOI Pelita has developed an oil palm plantation known as Ladang Tegai on the land.

[3] In Suit 22–59 of 1997 (MR), the four plaintiffs in that suit has sued the defendants therein inter alia for trespass and for impairing their native

customary rights ('NCR') over the above described parcels of land. On 31 March 2010, the presiding High Court judge ruled that the plaintiffs have NCR over the land; that the defendants had impaired the NCR of the plaintiffs over their land; that the defendants were required to pay damages to the plaintiffs to be assessed; and that notwithstanding their NCR over the land that the first defendant, now known as IOI Pelita, shall remain the registered owner of and shall have possession of the land.

[4] On appeal, the Court of Appeal set aside the decision of the High Court in Suit 22–59 of 1997 that the plaintiffs therein did not have any NCR over the land which was owned by IOI Pelita.

[5] In this present suit, Suit MR-22–9 of 2011, the plaintiff ('IOI Pelita') has sued the seven defendants, including three of the previous plaintiffs in Suit 22–59 of 1997, inter alia, for trespass and unlawful harvesting of fresh fruit bunches ('FFB') of oil palm fruits from the plantation of the plaintiff, for injunctions and damages against the defendants.

[6] On 8 June 2011, on an application by the plaintiff against the seven defendants, after reading the affidavits filed and hearing counsels for the parties, the court allowed the interlocutory injunctions against the defendants. In view of the above decision of the Court of Appeal, the parties attempted mediation and negotiations to settle their disputes but failed to do so.

[7] On 1 March 2013, the plaintiff filed an application, upon leave having been obtained on 20 February 2013 from the court, for an order of committal against the first, second, third, fourth, fifth and sixth defendants together with seven others, whose name is set out in the application, for failure to comply with or for committing a breach or breaches of the terms of the court order given on 8 June 2011.

[8] On 10 July 2013, the parties agreed to settle this suit on these terms: (1) that the defendants agree to pay damages to be assessed by the deputy registrar to be paid to the plaintiff; (2) that the committal proceedings shall continue and not be affected by this agreement; (3) that the six defendants and the seven persons named in the committal proceedings undertook to court that they would comply with the injunction granted on 8 June 2011; (4) that they would not obstruct, interfere or threaten the plaintiff, its servants, agents or contractors in respect of what they do or did in the land; (5) that in the event there was no breach of the undertaking within two months, the parties would appear before the court to withdraw the committal proceedings; and (6) that the undertaking would take effect from this date ie on 10 July 2013.

[9] On 13 September 2013, counsel for the plaintiff informed the court that

A the six defendants and the seven persons had breached the undertaking and that the plaintiff wished to proceed with the committal proceedings against them.

B **[10]** PW1 was the assistant manager of Ladang Tegai. On 11 July 2013 he lodged a police report No Beluru/000319/13 that on 21 June 2013 at about 9.30am several groups of people from the nearby villages of Long Teran Kanan A and B, Long Jejan and Long Takong including Lah Anyie, Ding Ngau Bato, Usa Ding, Lawai Anyie, Lewi Anyie, Johnny Wan, Enang Wan, Lenjau Ngerong, Along Selong and Martin Ului had unlawfully harvested FFB at Lot C 3 of Ladang Tegai.

[11] On the same day ie 11 July 2013, PW1 lodged another report No Beluru/000320/ 12 that on 11 July 2013 at 10.30am. Ding Ngau Bato and Usa D Ding had unlawfully harvested FFB at Block 994 of Ladang Tegai and prevented the workers of the plaintiff from entering block 00C, 00D, 00E and 00F of Ladang Tegai.

[12] PW1 had over a period of several days in July and in August had lodged E seven reports against various persons. Nine other police reports were lodged by Hassanudin bin Baharuddin, Tan Kim Ha and Zaparudin bin Zainun, being the employees or agents of the plaintiff, against various persons. These three persons were not called to testify and did not testify as to what happened or on the contents of their police reports. PW1 testified that he was present when F four out of the nine reports were lodged and he confirmed the contents of those four police reports.

[13] The sixth defendant testified that he is working with Daiken Miri Sdn G Bhd in Kuala Baram, Miri. He testified that he stays in Miri and did not go to Ladang Tegai at the material times. He denied that he had trespassed and or had harvested FFB in Ladang Tegai.

[14] The second defendant testified that he stays with his daughter Miki and H her family in Lambir, Miri. He said he is an old man and walks with the aid of a walking stick and often has to go for medical check-ups and treatments in Miri. He testified that he did not go to Ladang Tegai and was not able to harvest FFB at Ladang Tegai. He denied that he had trespassed and had harvested FFB in Ladang Tegai.

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[15] The fifth defendant testified that he has his own oil palm garden located in his village which is outside Ladang Tegai. He said he has a licence issued to him by Lembaga Minyak Sawit Malaysia ('MPOB') to sell oil palm fruits and the licence is valid for five years from 27 October 2008–30 September 2013.

He exhibited a copy of the licence. He denied that he had trespassed and had harvested FFB from Ladang Tegai.

[16] Semion Along ('DW4') is not a party in the committal proceedings. He is a farmer residing at Kpg Long Teran Kanan B, Baram. He testified that his father Along Selong could not attend the court. He testified that his father was in Miri looking after his mother Bungan Sigau (f) who was hospitalised in Miri General Hospital for two weeks at that time. He said that therefore his father was not in Ladang Tegai and could not be responsible for harvesting FFB there.

[17] The first defendant testified that he is an engineer with Scomi KMC Sdn Bhd. He said he worked offshore Miri most of the time and exhed his letter of appointment. He denied that he was present and had harvested FFB at Ladang Tegai at the material times.

[18] The first defendant said that Juman Anyi is from Kpg Long Tebangan and he works offshore Miri, Malang Jok is working in Kuala Baram, Miri and Juman Ngau is from Kpg Long Liam and also works offshore Miri.

[19] He said he has planted oil palms on his NCR land and he has about 2,000 trees. He said he has a licence issued by MPOB to collect and sell his oil palm fruits and the licence is dated 31 October 2011 and valid for five years commencing 1 December 2011–30 November 2016. He exhibited a copy of the said licence.

[20] The third defendant is 47 years old. He said that he is residing at Lot 7541-30, Phase 12, Taman Ceria, Jalan Dato' Permaisuri 2B, Bandar Baru, Permyjaya, Miri. He said he was and is employed as an engineer with MI Drilling Fluids (M) Sdn Bhd, a company based in Kuala Lumpur. He exhibited a copy of his letter of offer/appointment. He said that he worked offshore Miri most of the time and he was not at Ladang Tegai at the material times.

[21] Contempt has been reclassified either as (1) a specific conduct of contempt for breach of a particular court order, or (2) a more general conduct for interfering with the due administration or the course of justice (*Attorney General v Newspaper Publishing plc and others* [1987] 3 All ER 276). A person who knowingly impeded or interfered with the administration of justice in an action between two other parties, was guilty of contempt of court notwithstanding that he was neither named in any order of the court nor had assisted a person against whom an order was made (*Attorney General v Times Newspaper Ltd* [1973] 3 All ER 54). These two cases were approved by the Federal Court in *Tan Sri Dato' (Dr) Rozali Ismail & Ors v Lim Pang Cheong @ George Lim & Ors* [2012] 3 MLJ 458.

[22] In all cases of contempt of court, except for contempt committed in the face of the court, a formal notice to show cause why he should not be committed to the prison or fined shall be served personally: O52 r 2B.

[23] Order 52 r 3(1) provides that no application to a court for an order of committal against any person may be made unless leave to make such an application has been granted in accordance with this rule. Sub-rule (2) requires that an application for such leave must be made exparte to the court by a notice of application supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on. Procedural rules governing committal proceedings must be strictly adhered to as the liberty of the individual is at stake (*Tan Sri G Darshan Singh v Tetuan Azam Lim & Pang* [2013] 5 MLJ 541).

[24] The standard of proof required in contempt of court proceedings is proof beyond reasonable doubt. Where there is doubt, such doubt ought to be resolved in favour of the alleged contemnor. The evidence when considered in its totality has to establish beyond reasonable doubt the guilt of the contemnor (*Wee Choo Keong v MBf Holdings Bhd & Anor and Another Appeal* [1995] 3 MLJ 549, *Metro Giant Group Sdn Bhd v Gala Sari Resources Sdn Bhd & Ors* [2007] 7 MLJ 52; [2008] 7 CLJ 579).

[25] The grounds on which an order of committal is sought must be set out in the statement accompanying the notice of motion. This information must be set-out with sufficient particularity and details to enable the person alleged to be in contempt to meet the charge. These requirements must be complied with and be strictly enforced (*Syarikat M Mohamed v Hahindapal Singh & Ors* [1991] 2 MLJ 112).

[26] In the grounds for the application for committal in para 6 of the statement, the plaintiff alleged that the first, second, third, fourth, fifth, sixth defendants respectively with the seven persons ie Along Selong, Malang Lenyau, Martin Ului, Ding Ngau Bato, Johnny Wan, Lewi Anyie and Usa Ding had disobeyed the injunction orders and were in breach of the terms of the orders by continuing to enter, trespass, harvest the oil palm crops, block, take control, assume control, seize, threaten to seize, suspend and or interfere with the plaintiff's occupation and possession of the land.

[27] The plaintiff submitted that it had served the court order given on 8 June 2011 on the first, second, fourth, fifth and sixth defendants on 24 February 2012, on the third defendant on 2 April 2012, on Malang Lenyau, Martin Ului, Ding Ngau Bato, Johnny Wan, Lewi Anyie and Usa Ding on

30 March 2012 and on Along Selong on 2 April 2012.

[28] The plaintiff submitted that it had issued and served a notice to show cause dated 27 April 2012 on the first to the sixth defendants and on the seven alleged contemnors on various dates in April and May 2012 as set-out in para 8 of the statement in support of this application for the committal.

[29] Although the plaintiff had filed an affidavit verifying the facts made by a Mr Tan Kim Ha referring to numerous police reports lodged against various persons which were collectively marked as exh TKH-5, in para 6 of the statement the plaintiff did not plead or set out the dates, times, places and or the incidents in respect of the numerous trespasses, harvestings, blockings, taking control, assuming control, seizures, threats to seize or interferences with the plaintiff's occupation and possession of the land allegedly committed by the six defendants and the seven persons herein in breach of the court orders. These specific charges must be set out in the statement otherwise the alleged contemnors would not be in a position to answer those charges made against them.

[30] Further, the affidavit verifying the facts affirmed by Tan Kim Ha also did not set out any particulars as to the dates, times, places and or the incidents in respect of the alleged breaches of the court order committed by the alleged contemnors notwithstanding that he had referred to those police reports. The accompanying affidavit is only to verify the facts relied in that statement. It cannot add facts to it. Any deficiency in the statement cannot be supplemented or cured by any further affidavit at a later time. The alleged contemnor at once be given full knowledge of what charge he is facing so as to enable him to meet the charge. This must be done within the four walls of the statement itself (*Tan Sri Dato' (Dr) Rozali Ismail & Ors v Lim Pang Cheong @ George Lim & Ors*).

[31] In the first police report Beluru/000198/12 dated 19 April 2012, the allegation was made against Lah Anyie, Ding Ngau Bato, Usa Ding, Lawai Anyie, Lewi Anyie, Johnny Wan, Emang Wan, Biby Ding and other Indonesians only and not against the other defendants and other alleged contemnors. Similarly, the police report Beluru/000168/12 dated 2 April 2012 was only against Malang Lenjau, Along Selong, Njau Balan Kasing and Martin Ului and not against the other alleged contemnors. Police report Beluru/RPT/131/2012 dated 6 March 2012 was made against Lah Anyie, Ding Ngau Bato, Lawai Anyie and Lenjau Ngerong but on that date the court order given on 8 June 2011 was yet to be served on Ding Ngau Bato. There were many similar instances ie police report BLU/RPT/118/2012 dated 27 February 2012, police report BLU/RPT/106/2012 dated 20 February 2012 and BLU/RPT/65/2012 dated 3 February 2012 where complaints were made

against the alleged contemnors but the court order given on 8 June 2011 had yet to be served on them.

[32] During the hearing of the committal proceedings, PW1 did not refer to any of the police reports annexed to the affidavit of Tan Kim Ha and marked as exh TKH-5, which were the basis of the plaintiff's complaints against the alleged contemnors. PW1 did not testify on the breaches or trespasses or harvestings or threats or seizures or interferences on those dates, times, places and incidents referred to in those police reports were committed by the 13 alleged contemnors. He did not identify any of these 13 contemnors to have committed those breaches during the hearing of the committal proceedings although most of them were present in court. PW1 did not tender any photographs to identify or establish that any or all of the 13 contemnors had committed those breaches.

[33] Instead, PW1 referred to several police reports lodged by him and by Hassanudin, Tan Kim Ha and Zaparudin. However these reports were lodged in July and August 2013 and not on the incidents complained of by the plaintiff in its application for the committal. There was no notice to show cause to the 13 contemnors in respect of the alleged breaches referred to in the police reports lodged in July and August 2013. These incidents were also not set-out in the statement in support of the application for committal.

[34] Similarly, PW1 referred to numerous photographs showing a tractor used to harvest FFB, vehicles used for carrying FFB and a blockage or gathering carried out by persons at Ladang Tegai. These photographs were taken in July, 2013 and not on the incidents complained of in the application for committal. PW1 in his testimony did not specifically name or identify any of the 13 alleged contemnors who had committed the alleged breaches complained of in the application for committal. He only identified Ding Ngau Bato as the organiser of the gathering at Ladang Tegai held in July 2013 and that a vehicle belonging to Ding Ngau Bato was used to carry the FFB belonging to the plaintiff. PW1 did not tender any extract of vehicle to prove that the vehicle belonged to Ding Ngau Bato and he did not testify that it was Ding Ngau Bato who was then driving the said vehicle.

[35] Based on the evidence adduced by the plaintiff at the committal proceedings, the plaintiff has failed to prove its case against any of the alleged 13 contemnors beyond any reasonable doubt. Further, the six defendants and the seven persons named as the alleged contemnors have raised some doubts that they were the persons who had committed the alleged breaches complained of.

[36] For the reasons given, the plaintiff's application for committal is dismissed with costs of RM6,500.

Application dismissed with costs of RM6,500.

Reported by Afiq Mohamad Noor